

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

NATHAN LEE BARBER, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-14-455-D
	)	
JOHN WHETSEL, <i>et al.</i> ,	)	
	)	
Respondents.	)	

**ORDER OF DISMISSAL**

Petitioner, a state pretrial detainee appearing *pro se*, brings this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin for initial proceedings. In a Report and Recommendation [Doc. No. 9] issued on June 20, 2014, the Magistrate Judge recommended dismissal of the habeas petition pursuant to Rule 4, Rules Governing Section 2254 Cases in the United States District Courts. The Magistrate Judge determined the claims raised in the petition and challenging the constitutionality of Petitioner's conditions of confinement are not cognizable in a federal habeas action but can only be brought pursuant to 42 U.S.C. § 1983. Therefore, the Magistrate Judge recommended that the petition be dismissed without prejudice.

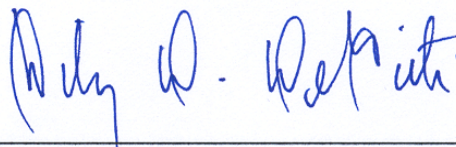
The Magistrate Judge further determined that Petitioner should not be granted leave to amend because he has a civil rights action pending in this Court which he filed on the same date as the instant petition. The Magistrate Judge determined that in that action, he alleges the same facts as those raised in the instant petition. The Magistrate Judge additionally determined leave to amend would not be proper because Petitioner alleges the state court criminal actions for which he is being detained are still pending and, therefore, abstention pursuant to *Younger v. Harris*, 401 U.S. 37, 43

(1971) is proper. Accordingly, the Magistrate Judge recommended dismissal of the petition without prejudice to refiling and without leave to amend.

The Magistrate Judge specifically advised Petitioner of his right to object to the findings and recommendations set forth therein. He further advised Petitioner that his failure to timely object would constitute a waiver of his right to appellate review of the factual and legal matters in the Report and Recommendation. Petitioner's deadline for filing objections was July 7, 2014. To date, Petitioner has not filed an objection to the Report and Recommendation or sought an extension of time in which to do so. Accordingly, the Court adopts the Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 9] is ADOPTED in its entirety and the action is dismissed without prejudice and without leave to amend.

IT IS SO ORDERED this 22<sup>nd</sup> day of July, 2014.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE